
IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1893.—Ordered to be printed.

Mr. CAMERON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 3177.]

The Committee on Military Affairs, to whom was referred the bill (S. 3177) for the relief of J. E. Gillingwaters, having had the same under consideration, beg leave to submit the following report:

The records of the War Department show that J. E. Gillingwaters was enlisted March 14, 1862, as a private in Company C, Tenth Regiment Missouri State Militia Cavalry, and that he was discharged January 9, 1864, to enlist in the Twelfth Regiment Missouri Cavalry; that he enlisted January 11, 1864, as a private in Company H, Twelfth Regiment Missouri Cavalry, and was dishonorably discharged the service by sentence of general court-martial. Reference is here made to the accompanying report of the Secretary of War, which forms a part of this report.

It appears that during the year 1865, while in the State of Tennessee in pursuit of Gen. Hood's army, at an inclement season of the year, the said Gillingwaters, having lost his blankets, and while on scout duty in company with and under the command of Capt. Harris, an army scout, they discovered a quantity of stores and with the consent and approval of Capt. Harris, took possession of two blankets and walking cane. The cane had an inscription upon it showing that it was the property of a Confederate officer. He was afterwards ordered by some officer who happened to be present to replace the things he had taken, which he did.

After consulting with Capt. Harris, who was the officer of his command, he was instructed to keep the blankets; he thereupon carried away the blankets and the cane; the cane to present to the colonel of his regiment, the blankets for himself. The court-martial before whom he was tried sentenced him to be dishonorably dismissed and to forfeit pay and allowance, which sentence, in the judgment of your committee, was for the purpose of making an example for the benefit of discipline in the command.

This soldier at that time being under 18 years of age, and previously having had a good reputation as a soldier, and having served in the Army more than three years, and at the time of his trial the war being over, your committee think that he was unduly dealt with, and in view of all the facts as set forth in the evidence filed with this report recommend that the bill do pass.

Case of J. E. Gillingwaters, late of Company H, Twelfth Regiment Missouri Cavalry.

RECORD AND PENSION DIVISION, *February 25, 1892.*

The records show that James E. Gillingwaters was enlisted March 14, 1862, as a private in Company C, Tenth Regiment Missouri State Militia Cavalry (subsequently known as Company C, Third Regiment Missouri State Militia Cavalry), and that he was discharged January 9, 1864, to enlist in the Twelfth Regiment Missouri Cavalry; that he enlisted January 11, 1864, as a private in Company H, Twelfth Regiment Missouri Cavalry, and was dishonorably discharged the service by sentence of general court-martial, promulgated in orders, of which the following is a copy:

[Extract.]

GENERAL ORDERS, } HEADQUARTERS FIFTH DIVISION, CAVALRY CORPS,
No. 25. } MILITARY DIVISION MISSISSIPPI,
Eastport, Miss., May 26, 1865.

Before a general court-martial convened by virtue of General Orders, No. 20, from these headquarters, dated Eastport, Miss., April 24, 1865, and of which Col. John W. Graham, Seventh Illinois Cavalry, is president, was arraigned and tried:

XII. Private James E. Gillingwaters, Company H, Twelfth Missouri Cavalry.

Charge.—Larceny.

Finding.—Guilty.

Sentence.—And the court does therefore sentence the said Private James E. Gillingwaters, Company H, Twelfth Missouri Cavalry, to be dishonorably discharged the service with the loss of all pay now due, and to be confined at hard labor for six months.

XXV. Proceedings and findings and sentence in the case of Private James E. Gillingwaters, Company H, Twelfth Missouri Cavalry, are approved. The commanding officer of the Twelfth Missouri Cavalry will have the prisoner brought under guard before the regiment at dress parade, the order promulgating the proceedings read, and the prisoner trumpeted from their right to the left of the regiment with "rogue's march," and then forwarded, with a copy of the order in his case, to Capt. R. M. Goodwin, assistant provost-marshal-general, Department of the Cumberland, for confinement in military prison at Nashville, Tenn.

By command of Bvt. Maj. Gen. Edward Hatch.

HENRY A. COLVIN,
Assistant Adjutant-General.

The specification under the charge is as follows:

"In this, that he, James E. Gillingwaters, private Company H, Twelfth Missouri Cavalry, did improperly and illegally have possession of and did feloniously carry away, with the intent to appropriate to his own use and benefit, one Mackinaw blanket and one silver headed cane, the property of a citizen of Purdy, Tenn.
* * * All this on or about the 5th of April, 1865."

In a petition to the President, dated May 20, 1872, which was referred to this Department, Mr. Gillingwaters makes the following statement:

"That during the year 1865, while in the State of Tennessee, in close pursuit of Gen. Hood's army, at a very inclement season of the year, he lost his camp blankets, of which he was in much need, and while on scout duty in company with and under the command of Capt. Harris, an army scout, they were informed of a quantity of army goods belonging to the rebels stored in a certain building near Pittsburg Landing. Your petitioner stated his need to the officer and asked him if he could not be supplied out of the rebel stores said to be in that building. To this the officer replied he could be supplied from the stores referred to, and believing that they had a right to capture rebel goods your petitioner, in company with the officer and several other soldiers, proceeded to and entered the building and searched it, and in the house they found a quantity of blankets, clothing, and other articles. Believing them to be Confederate stores, though claimed as private property, at the suggestion of the officer with him, he took two blankets, to supply his immediate wants, and a fine walking cane, the property of a Confederate officer, which your petitioner captured, intending to present it as a trophy to his colonel.

"There were in the building a large quantity of blankets, perhaps twenty-five or thirty, all of which were taken by other Union soldiers, and for which no arrests were made, except your petitioner, who, for the act above described and frankly stated, was arrested on a charge of larceny, tried by a court-martial, and condemned to a forfeiture of all pay and allowance and six months' imprisonment, and to a dishonor-

able discharge, all of which were fully executed. From the fact that no other arrest was made for the same offense, your petitioner infers and believes that the arrest was caused by personal malice to your petitioner. On the trial your petitioner had no attorney to defend or direct him and to shield him from the effects of youthful ignorance of law. He could have offered in mitigation of his offense the suggestions of his officers and the example of others, but he disdained to become an informer on brother soldiers in order to shield himself from punishment if he was really guilty of violating the Army laws.

"Your petitioner does not reflect on the honor or justice of the court which tried and condemned him. He is bound to presume that the court was governed by the law and the evidence in the case as presented. He also admits that the act as he now sees it, after several years of more mature age and reflection, was against the spirit and probably the letter of the Army Regulations. He sees and admits the necessity of these regulations and discipline being strictly enforced for the honor and dignity of the service and for the good of the Army individually and collectively. But he earnestly solicits the attention—the charitable attention—of the President in mitigation and palliation of the offense charged—

"(1) To his extreme youth when he first entered the service, when, during the first years of the war, a great deal of demoralization and irregularity in discipline existed, and especially among the Western troops, accustomed to but comparatively little control.

"(2) To the fact, already stated, that your petitioner had no counsel to direct or defend him or to prevent improper admissions or evidence being introduced.

"(3) That at the time of the commission of the offense charged, influenced by bad counsel and previous loose discipline observed, your petitioner believed he was engaged in an act of war, instead of an act of plunder as charged by the court.

"(4) Your petitioner says that, after three years of honorable service in the different branches of the Army, in which he endeavored to discharge his duty and in which he earned the pay and bounty due to a soldier, he thinks the punishment of imprisonment and the degradations to which he was subjected are sufficient to have vindicated the honor and dignity of the Army, and that a great and magnanimous Government can as well afford to pardon the foibles of loyal, though doubtless misguided soldiers, who have committed indiscretions in their overzealous desire to punish rebels, as to pardon the rebels of almost every grade who made the necessity of bringing into service such vast armies; and the policy of general amnesty seems now about to be generally adopted."

Accompanying this petition was a paper signed by five citizens of Louisiana, Mo., viz, Edwin Draper, D. F. Brantlinger, postmaster; Edward Smart, late colonel Third Regiment Missouri State Militia Cavalry; S. Angus Bartlett, late captain Company C, of that regiment, and H. C. Hardin, "Mo. H. R.," who stated that they were fully satisfied, from their acquaintance with the petitioner, that if he had been of more mature age (he states that he was under 16 years of age at date of original enlistment) and better understood the rules and usages of the Army, he would not have incurred such penalty; that since he left the Army he had been a quiet, good citizen, was married to a respectable lady, and was deemed worthy of the clemency of the Executive, and they trusted that, while it was the policy of the Government to extend amnesty and pardon to nearly all persons lately in rebellion against the Government, its clemency would not be withheld from a youth who, after years of honorable service, through want of experience and probably from the bad example of older persons, incurred the penalty of the rigid rules of the Army Regulations.

It being held that it was not in the power of the Executive to set aside an executed sentence of a general court-martial, this application was denied by letter from the office of the Adjutant-General of the Army, dated July 26, 1872.

Respectfully submitted.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.